

June 18, 2004

Mr. Alex Matthiessen  
Executive Director  
Riverkeeper, Inc.  
25 Wing & Wing  
Garrison, NY 10524

Mr. David Lochbaum  
Nuclear Safety Engineer  
Union of Concerned Scientists  
1707 H Street NW, Suite 600  
Washington, DC 20006

Dear Messrs. Matthiessen and Lochbaum:

This letter responds to the Petition you filed with Dr. William Travers, Executive Director for Operations, of the Nuclear Regulatory Commission (NRC) pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206) on September 8, 2003, as supplemented on September 22 and October 29, 2003. In your Petition, you requested that the NRC: (1) take immediate enforcement action against Entergy Nuclear Operations, Inc. (Entergy), the licensee for Indian Point Nuclear Generating Unit Nos. 2 and 3 (IP2 and 3) in Buchanan, New York, by issuing an Order requiring Entergy to immediately shut down IP2 and 3 and maintain the reactors shut down until the containment sumps are modified to resolve Generic Safety Issue 191 (GSI-191), and (2) as an alternative, should the NRC deny the request to require IP2 and 3 to shut down immediately, issue an Order to prevent plant restart following each plant's next refueling outage until such time that the containment sumps are modified to resolve GSI-191. If this alternative is chosen, the Petitioners further requested a requirement to be included within the Order for Entergy to (a) maintain all equipment needed for monitoring leakage of reactor coolant pressure boundary components within containment fully functional and immediately shut down the affected reactor upon any functional impairment to leakage monitoring equipment, and (b) refrain from any activity under 10 CFR 50.59, 10 CFR 50.90, Section VII.C of the NRC's Enforcement Policy, or Generic Letter 91-18, Revision 1, that increases or could increase the probability of a loss-of-coolant accident (LOCA).

On October 22, 2003, the NRC staff acknowledged receiving your Petition and stated that, pursuant to 10 CFR 2.206, your Petition was being referred to the Director, Office of Nuclear Reactor Regulation, for action and that it would be acted upon within a reasonable time. You were also told that your request that the NRC issue an Order to to immediately shut down IP2 and 3 was denied.

You met with the Office of Nuclear Reactor Regulation's Petition Review Board (PRB) by telephone on September 24, 2003, to discuss the Petition and provide additional details in support of this request. The transcript of this meeting was treated as a supplement to the Petition and is available in Agencywide Documents Access and Management System (ADAMS) for inspection

at the Commission's Public Document Room, located at One White Flint North, Public File Area O-1F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS Public Library component on the NRC Web site, <http://www.nrc.gov/reading-rm.html> (the Public Electronic Reading Room).

In letters dated October 15, 2003, and January 20, 2004, Entergy provided information related to the Petition. This information was considered by the staff in its evaluation of the Petition.

In your Petition, you stated that the basis for the requested enforcement actions in the Petition is a lack of reasonable assurance that the IP2 and 3 containment sumps will be able to perform their function during a LOCA. Your conclusions regarding the containment sumps were based on your analysis of publicly available reports that were prepared for the NRC by the Los Alamos National Laboratory (LANL). The NRC-sponsored studies that formulate the basis for your requested enforcement actions were performed in support of the NRC staff's review of Generic Safety Issue 191.

Consistent with the generic issue process, the NRC is currently developing guidance to be used by individual plants to evaluate the potential for sump clogging. Although many plants have taken steps to further ensure adequate sump recirculation in the event of a loss-of-coolant accident, an NRC-approved methodology for evaluating each plant's sump performance is intended to (1) ensure that each plant evaluates the potential for debris-clogging in a consistent manner based on state-of-the-art, staff-approved methods and plant-specific information; and (2) provide the NRC with the technical basis for ensuring that any proposed solution adequately addresses the issue. If, at any time during the resolution of the generic issue, the NRC should determine that unsafe conditions exist at Indian Point or any other plant, immediate actions will be taken to ensure the continued health and safety of the public.

The staff sent a copy of the Proposed Director's Decision to you and to Entergy for comment on February 19, 2004. You responded with comments on March 30, 2004. Entergy did not provide any comments. Your comments and the staff's response to them are included as enclosures.

A copy of the Director's Decision (DD-04-02) will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c). As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time. The documents cited in the enclosed decision are available in ADAMS for inspection.

I have also enclosed a copy of the notice of "Issuance of Director's Decision Under 10 CFR 2.206" that has been filed with the Office of the Federal Register for publication.

Please feel free to contact the Petition Manager, Patrick Milano, at 301-415-1457 to discuss any questions related to this Petition.

Sincerely,

*/RA/*

Brian W. Sheron, Acting Director  
Office of Nuclear Reactor Regulation

Docket Nos. 50-247 and 50-286

Enclosures: 1. Director's Decision 04-02  
2. Petitioners' Comments on Proposed Director's Decision  
3. Staff's Response to Petitioners' Comments  
4. *Federal Register* Notice

cc w/encls: See next page

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/RA/

Brian W. Sheron, Acting Director  
Office of Nuclear Reactor Regulation

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cc w/encs: See next page

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